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COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND
PROTECTION OF MINORITIES

Fiftieth session

SUMMARY RECORD OF THE 26th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 20 August 1998, at 10 a.m.

Chairman: Mr. GUISSÉ

later: Mr. ALFONSO MARTÍNEZ

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CONSIDERATION OF DRAFT RESOLUTIONS AND DECISIONS (continued)

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GE.98-13974 (E)

The meeting was called to order at 10 a.m.

CONSIDERATION OF DRAFT RESOLUTIONS AND DECISIONS (continued)

Draft resolutions relating to agenda item 2

Draft resolution E/CN.4/Sub.2/1998/L.13 (Violations of the rights of human rights defenders in all countries)

1. Mr. BENGOA said that the text incorporating the amendments to draft resolution E/CN.4/Sub.2/1998/L.13, which had been distributed to members of the Sub-Commission, was the result of a joint effort. Judging from consultations with his colleagues, it seemed that the revised text would have to be put to the vote. The list of names in paragraph 4 was extremely important since it constituted the thrust of the draft resolution. Since the persons listed were all very well known in the human rights community it would have been logical to believe that a consensus on the matter was possible. The list had been carefully checked and he apologized if it gave the appearance of being rather selective; that had not been the intention of the sponsors.

2. Mr. MAXIM said that, since Mr. Bengoa suggested that the list of names in paragraph 4 might still contain errors, consideration of the matter should be deferred, as proposed by Mr. Joinet, to the Sub-Commission's fifty-first session; that would leave time to prepare a definitive list.

3. Mr. KARTASHKIN said he had been surprised to find that Kosovo had been referred to in paragraphs 2 and 4 since it had been stated the previous day that, unlike all the other places referred to in those paragraphs which were towns or countries, Kosovo was not a country.

4. Mr. SIK YUEN hoped that flexibility would be shown in applying the rule under which an expert was unable to submit an amendment to a text he had sponsored. Although he supported efforts to curb violations of the rights of human rights defenders, he was unable to subscribe to paragraph 4 and would withdraw his name from the list of sponsors if it was retained in its present form.

5. Mr. JOINET said he had never proposed that the adoption of the draft resolution should be deferred to the fifty-first session but had simply requested Mr. Bengoa to consider ways of improving the way in which the list was drawn up before the next session. The draft resolution would be pointless without paragraphs 2 and 4. It was inconceivable that the reaction of States should be a consideration in the matter of protecting the rights of many persons who had never enjoyed such protection. On the question of Kosovo, he pointed out that, although Timor and Tibet were not States, it was current United Nations practice to refer to them in connection with the examination of specific situations.

6. Mr. KARTASHKIN said that he would be obliged to withdraw as a sponsor if the words "Federal Republic of Yugoslavia" were not included in paragraphs 2 and 4 following, or instead of, "Kosovo".

7. Mr. FAN was of the view that the draft resolution had not been sufficiently thought through. In the first place, the term "human rights defenders" was not official. The draft declaration to be submitted to the General Assembly at its next session did not concern the rights of human rights defenders but "the right and responsibility of the individuals, groups and organs of society to promote and protect universally recognized human rights and fundamental freedoms". Nor did he think that the names of persons and countries should be listed. Although certain persons were genuinely working to defend human rights, others were using the cause of human rights to pursue different goals. The question was complex and he supported Mr. Maxim's proposal to defer consideration of the draft resolution to the Sub-Commission's fifty-first session, since discussions in the General Assembly might well clarify the "human rights defenders" concept.

8. Mrs. WARZAZI said there was no doubt in her mind that the persons referred to were human rights defenders but, as a compromise solution, proposed that paragraph 4 should be amended by placing a full stop after the words "the world" in the third line and adding, before paragraph 6, a new paragraph reading as follows: "Requests the Secretary-General to inquire into the status, situation and security of the persons whose names appear on the list annexed to this resolution and to inform the Sub-Commission accordingly at its fifty-first session".

9. Mr. JOINET noted that the request should be addressed to the High Commissioner for Human Rights rather than to the Secretary-General.

10. Mr. ALFONSO MARTÍNEZ pointed out that the problem would not be solved by annexing the list of persons in question to the draft resolution. Since it was important to avoid votes that divided the Sub-Commission, he supported Mr. Maxim's judicious suggestion to defer consideration of the draft resolution. If his suggestion was not adopted he would request a separate vote on paragraphs 2, 4 and 5.

11. Ms. HAMPSON was not in favour of deferring consideration of the draft nor of deleting the names in paragraphs 2, 4 and 5. She would, however, be prepared to go along with the text if Mr. Bengoa took Mrs. Warzazi's suggestion into account. Moreover, Mr. Fan's concern could be met by referring to the draft declaration in question by replacing the words "human rights defenders" in paragraph 4 by "those concerned by the draft declaration".

12. Mr. BENGOA said that Mrs. Warzazi's proposal was quite acceptable. Moreover, he agreed that the "Federal Republic of Yugoslavia" should be mentioned after "Kosovo".

13. Mrs. WARZAZI read out paragraph 4 and the new paragraph 6 with the various amendments that had been proposed.

14. Mr. ALFONSO MARTÍNEZ repeated his request for a separate vote on paragraphs 2, 5 and 6. He would also like the title of the draft resolution to be amended in accordance with Ms. Hampson's suggestion in order to meet Mr. Fan's concerns.

15. Mr. BENGOA pointed out that, in general, the titles of draft resolutions were given in shortened form. However, he would not object to the amendment of the title in order to avoid a vote.

16. Mr. FAN and Mr. ALFONSO MARTÍNEZ requested a separate vote on the title as well as on paragraphs 2, 5 and 6.

17. The CHAIRMAN invited observers for States wishing to make statements to do so before the draft resolution was put to the vote.

18. Mr. Alfonso Martínez took the Chair.

19. Mr. MERIC (Observer for Turkey) said that his Government regarded human rights defenders, not only in Turkey but throughout the world, as an important pillar of the international system for the protection and promotion of human rights. For that reason his delegation had participated actively in the preparation of the draft declaration on human rights defenders and was in favour of a resolution on violations of their rights.

20. However, his delegation would prefer the draft resolution to evaluate each and every case on its own merits rather than adopt a general approach to the question. For example, he explained that the vicious assassination attempt against Mr. Birdal, who was referred to in paragraph 4 of the draft resolution, had been condemned in very strong terms by the President of the Republic, the Prime Minister, ministers and all political party leaders, that the culprits had been arrested and brought to justice, and that Mr. Birdal himself had expressed his appreciation for the swift action taken by the Turkish police. He was at present recuperating in enhanced security conditions. For those reasons, the Turkish Government would not like Mr. Birdal's name referred to in the draft resolution.

21. Ms. POSADA (Observer for Colombia) said that Colombia's judiciary and police were doing everything possible to identify and arrest the person responsible for the assassination of the lawyer Eduardo Umaña Mendoza, and that the Government intended to offer a reward of $50,000 to any person providing information likely to throw light on the matter.

22. Moreover, at a meeting held on 23 April 1998, the Government had promised NGO human rights defenders that the Office of the Procurator-General of the Nation would correct the information provided on human rights defenders in the secret files of the Administrative Security Department (DAS) of the national army and judicial police, since the NGOs considered that human rights defenders were listed as auxiliaries or members of subversive armed groups.

23. Moreover, urgent measures had been taken to protect the lives of human rights militants, who would be escorted by bodyguards they themselves selected; they would be trained and paid by the State security services, however. Representatives of the Ministry of the Interior and NGOs had already met to draw up the list of human rights militants needing immediate preventive protection.

24. Lastly, sanctions would be taken against officials who failed to comply with the presidential directive ordering them to abstain from making insinuations about NGOs.

25. His Government was firmly determined to do whatever was necessary to protect human rights defenders, and she would inform the Commission of the progress made in ongoing investigations.

26. Mr. Guissé resumed the Chair.

27. Mr. MORJANE (Observer for Tunisia) endorsed the reservations expressed by certain experts concerning the term "human rights defenders". It was all a matter of deciding to whom that term should be applied.

28. There was a danger that, by referring to certain names and consequently pinpointing certain States and omitting others, the Sub-Commission might be accused of lacking objectivity. It would therefore be better, in order to avoid any danger of selectivity, for the Sub-Commission to appeal to all States and all members of the international community to implement and respect the declaration on the right and responsibility of individuals, groups and organs of society to promote and protect universally recognized human rights.

29. Ms. BAUTISTA (Observer for the Philippines), noting that paragraph 4 of the draft resolution contained a reference to a "Judicial Centre of Public Interest of the Philippines", said that there was no group of that name in the Philippines. Her delegation was of the view that groups whose existence was not recognized or whose names were misleading should not be referred to in a Sub-Commission draft resolution.

30. Mr. AYE (Myanmar) was surprised that one of the operative paragraphs of the draft resolution contained a reference to Myanmar, which had already been the subject of a resolution of the Commission on Human Rights; it was his delegation's understanding that the Sub-Commission and Commission had decided to ensure that the work of one did not duplicate that of the other.

31. His delegation also wished to inform the Sub-Commission of recent developments in the situation in Myanmar. Two days previously, the responsible authorities of the Government of Myanmar had had a meeting with the National League for Democracy. The meeting had been fruitful and the Government hoped it would be the first in a series of confidence-building talks between the Government and the League.

32. In conclusion, his delegation invited the Sub-Commission to demonstrate its support for the positive turn of events in Myanmar by deleting operative paragraph 5.

33. Ms. BU FIGUEROA (Observer for Honduras) said it was surprising that the countries referred to in paragraph 4 were all developing countries. Honduras, for its part, had achieved considerable progress in human rights matters during the past few years. An investigation was carried out whenever a human

rights defender was harassed and the National Human Rights Commission had been established to ensure respect for the rights and freedoms embodied in the Constitution as well as in the international instruments ratified by Honduras.

34. It would appear premature to adopt the draft resolution in its present form and might be preferable to pursue consultations with the countries mentioned in paragraph 4.

35. Mr. HASSAN (Observer for Nigeria) said that, to his knowledge, Mr. Clément Nwankwo, Director of the Constitutional Rights Project of Nigeria, who was referred to in paragraph 4, had never been in trouble with the Government. On the other hand, he had certainly had a brush with the Swiss Government which had expelled him the previous year to Nigeria.

36. The CHAIRMAN recalled that Mr. Alfonso Martínez and Mr. Fan Guoxiang had requested a separate vote on the title of the draft resolution as well as on paragraphs 2, 5 and 6. A vote had also been requested on the draft resolution as a whole.

37. A vote was taken by secret ballot.

Title of the draft resolution

38. At the invitation of the Chairman, Mr. Boutkevitch and Mr. Mehedi acted as tellers.

39. The title of the draft resolution was adopted by 20 votes to 4.

Paragraph 2

40. At the invitation of the Chairman, Ms. Hampson and Mr. Khalil acted as tellers.

41. Paragraph 2, as amended, was adopted by 17 votes to 6 with 1 abstention.

Paragraph 5

42. At the invitation of the Chairman, Ms. Koufa and Mr. Genot acted as tellers.

43. Paragraph 5 was adopted by 19 votes to 5.

Paragraph 6

44. At the invitation of the Chairman, Mr. Sorabjee and Mr. Sik Yuen acted as tellers.

45. Paragraph 6, as amended, was adopted by 22 votes to 2.

Draft resolution as a whole

46. At the invitation of the Chairman, Mr. Gomez-Robledo Veduzco and Mr. Oloka-Onyango acted as tellers.

47. The draft resolution as a whole (E/CN.4/Sub.2/1998/L.13), as amended, was adopted by 21 votes to 3.

48. Mr. WEISSBRODT, speaking on a point of order, said that in order to avoid interminable discussions in future, the Sub-Commission should make sure that extensive consultations took place on any draft resolution before it was tabled.

Draft resolution E/CN.4/Sub.2/1998/L.18 (Developments in the situation in Mexico)

49. Mr. BENGOA, noting that the draft resolution dealt with an extremely delicate question on which extensive consultations had taken place, asked that it be put to the vote.

50. Mr. ALFONSO MARTÍNEZ questioned the preventive approach adopted by the Sub-Commission. In his view, the Sub-Commission was not competent to decide on proactive action in a human rights situation. It should take action when specific and systematic events were noted, namely, when it had points of reference on which it could base its action and not vague criteria as in the present case. A preventive approach would lead the Sub-Commission to adopt questionable and therefore dangerous decisions. He would vote accordingly.

51. Mr. JOINET explained that the draft resolution had not been discussed with the Mexican Government.

52. Mr. DE ICAZA (Observer for Mexico) pointed out that no systematic violations of human rights took place in Mexico and that the violations committed were not associated with any State policy. On the contrary, the Mexican Government had made, and was still making, a major effort to introduce a culture that was respectful of human rights. For example, steps had been taken to improve legal instruments. At the judicial level, the Government had prosecuted perpetrators of human rights violations, even if they were State agents, and investigations had been carried out rapidly where complaints were based on specific evidence. At the political level, the Government had displayed a desire for conciliation by inviting the National Zapatista Liberation Army to engage in dialogue and negotiations and by seeking to establish a new relationship with the indigenous peoples present in its territory. At the economic level, efforts had been made to improve the situation of the peoples living in Chiapas. At the legislative level, constitutional reforms would be carried out to ensure the application of all those measures. Lastly, at the international level, his Government was cooperating fully with international bodies and was discharging its human rights obligations. Furthermore, it was considering the possibility of ratifying the international instruments to which Mexico was not yet a party.

53. For all those reasons, his Government failed to see why the Sub-Commission had to adopt the draft resolution.

54. A vote was taken by secret ballot.

55. At the invitation of the Chairman, Mr. Kartashkin and Mr. Yokota acted as tellers.

56. Draft resolution E/CN.4/Sub.2/1998/L.18 was adopted by 12 votes to 6 with 6 abstentions.

Draft resolutions and decisions relating to agenda item 3
(E/CN.4/Sub.2/1998/L.4, L.6, L.24 and L.25)

Draft resolution E/CN.4/Sub.2/1998/L.4 (The concept and practice of affirmative action)

57. Mr. WEISSBRODT hoped that, since a broad consensus had been achieved in the Sub-Commission, the draft resolution would be adopted without being put to the vote.

58. Draft resolution E/CN.4/Sub.2/1998/L.4 was adopted without a vote.

Draft decision E/CN.4/Sub.2/1998/L.6 (The rights of non-citizens)

59. Mr. WEISSBRODT said that the draft decision was sponsored by all members who had participated in the discussion on the rights of non-citizens.

60. Mr. ALFONSO MARTÍNEZ said that, in his view, Mr. Weissbrodt should, in preparing the document referred to in the draft decision, take into account the work being done by other United Nations bodies on migrant workers, for it was probably that specific category of non-citizens that raised the most problems. A good part of the work involved would consist in making a compilation of all the measures taken to protect the rights of non-citizens so that the study would provide a true picture of all aspects of the problem. In his opinion, the draft could be adopted without being put to the vote.

61. Mr. JOINET, referring to his previous statement on agenda item 3, requested Mr. Weissbrodt to take into account in his working paper the fact that nationality was an essential element of legal personality.

62. Draft decision E/CN.4/Sub.2/1998/L.6 was adopted without a vote.

Draft resolution E/CN.4/Sub.2/1998/L.24 (World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance)

63. Mr. WEISSBRODT said that the draft resolution had been considerably revised as a result of the many consultations that had taken place and added the revised text had been distributed to experts. One of the main changes consisted in the deletion of paragraph 10. In paragraph 7 the Sub-Commission decided to request one of its members to prepare a paper containing thematic suggestions for the World Conference to be examined at the Sub-Commission's fifty-first session; Mr. Pinheiro had kindly agreed to undertake that task. He hoped that the draft resolution could be adopted without being put to the vote.

64. The CHAIRMAN announced that Mr. Joinet wished to become a sponsor.

65. Draft resolution E/CN.4/Sub.2/1998/L.24, as revised, was adopted without a vote.

Draft resolution E/CN.4/Sub.2/1998/L.25 (World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance)

66. Mr. ALFONSO MARTÍNEZ proposed that draft resolution L.25 should be replaced by a text which reflected its main idea, namely, a draft decision entitled "Globalization in the context of the increase in incidents of racism, racial discrimination and xenophobia" in which Mr. Oloka-Onyango was requested to prepare, without financial implications, a working paper on the topic as a contribution to the preparation of the World Conference against Racism. He read out the draft decision, the text of which had been distributed the previous day, and expressed the hope that it would be adopted without a vote.

67. The draft decision submitted by Mr. Alfonso Martínez to replace draft resolution E/CN.4/Sub.2/1998/L.25 was adopted without a vote.

Draft resolutions relating to agenda item 4

Draft resolution E/CN.4/Sub.2/1998/L.2 (Promotion of the realization of the right to drinking water supply and sanitation)

68. Mrs. WARZAZI expressed the hope that, as the draft resolution was obviously uncontroversial, it could be adopted without a vote.

69. Mr. ALFONSO MARTÍNEZ expressed a reservation concerning the wording of paragraph 7 where it was stated that the Commission on Human Rights approved the decision of the Sub-Commission to appoint Mr. Guissé as Special Rapporteur to conduct a detailed study on the relationship between the enjoyment of economic, social and cultural rights and the promotion of the realization of the right to drinking water supply and sanitation. In his opinion, it was for the Economic and Social Council to approve the recommendation of the Commission on Human Rights concerning that appointment. The secretariat should therefore change the wording of the paragraph to reflect its normal procedure.

70. Mr. JOINET, referring to the Sub-Commission's methods of work, recalled that the maximum number of reports it was authorized to undertake during any given period was 13. He wondered whether that number was likely to be exceeded by the study entrusted to Mr. Guissé.

71. Mr. ALFONSO MARTÍNEZ, supported by Mr. WEISSBRODT, said that the Sub-Commission was far from the figure in question.

72. The CHAIRMAN said that the secretariat would make the corrections suggested by Mr. Alfonso Martínez.

73. Draft resolution E/CN.4/Sub.2/1998/L.2 was adopted.

Draft resolution E/CN.4/Sub.2/1998/L.3 (The relationship between the enjoyment of economic, social and cultural rights and the right to development, and the working methods and activities of transnational corporations)

74. Mrs. WARZAZI noted that a preliminary study of the question had been undertaken by Mr. Guissé and added that if the Sub-Commission adopted the draft resolution it would establish a sessional working group to examine the effects of the working methods and activities of transnational corporations on the enjoyment of economic, social and cultural rights and the right to development. She hoped that the text would be adopted by consensus.

75. Ms. HAMPSON drew attention to the amendment she had submitted in document E/CN.4/Sub.2/1998/L.20 which consisted in adding a new subparagraph (f) to the end of paragraph 4 of the draft resolution in order to extend the mandate of the working group in question. According to her amendment, the working group would also be responsible for considering the scope of the obligation of States to regulate the activities of transnational corporations, where their activities had or were likely to have a significant impact on the enjoyment of human rights, both civil and political rights and economic, social and cultural rights, of all persons within their jurisdiction. The reason for that amendment was, as Mr. Khalifa and Mr. Eide had pointed out, that States had a tendency to evade their responsibilities in that field. That tendency was revealed by the privatization of prisons, for example.

76. Mr. JOINET, raising a problem of a practical nature, said it was difficult to see how two sessional working groups could meet at the same time should the Sub-Commission establish another sessional working group pursuant to the draft resolution. As Chairman-Rapporteur of the sessional Working Group on the Administration of Justice, he was personally familiar with the material difficulties encountered when even one working group met during the Sub-Commission's session.

77. As for the substance of the matter, it would have been well had the proposed working group also been entrusted with the task of collecting information on violations of the economic and social rights of population groups as well as their leaders, and especially trade union leaders.

78. Mr. SORABJEE wholeheartedly supported the amendment submitted by Ms. Hampson and said he wished to sponsor the draft resolution.

79. Mr. ALFONSO MARTÍNEZ also supported the most useful amendment submitted by Ms. Hampson. As for Mr. Joinet's observation, he pointed out that the Sub-Commission had already had two sessional working groups in the past.

80. Mr. WEISSBRODT proposed that, in view of the consensus reached on the amendment proposed by Ms. Hampson, it should be adopted.

81. Personally he found Mr. Joinet's observations concerning the practical problems raised by the establishment of another sessional working group to be most pertinent. He recalled that the Sub-Commission had not only two but three sessional working groups, if account was taken of the establishment

of the social forum to which Mr. Bengoa would refer shortly. The Sub-Commission's timetable for its next session should therefore be examined very carefully.

82. Mr. YOKOTA wholeheartedly supported the amendment proposed by Ms. Hampson, but requested that the right to development mentioned in various paragraphs of document L.3 should also be referred to in her amendment.

83. Mr. JOINET and Mr. ALFONSO MARTÍNEZ said that they too wished to sponsor draft resolution L.3, together with the amendment proposed by Ms. Hampson.

84. Mr. BENGOA supported draft resolution L.3 but said that it should also include international financial institutions, for it was they that had the greatest impact at the international level. He failed to see the purpose of paragraph 4 (d); would the recommendations and proposals referred to be addressed to the transnational corporations?

85. Mr. ALFONSO MARTÍNEZ, replying to Mr. Bengoa, explained that the working group itself would decide how it would proceed and make recommendations which, in its view, were appropriate as its work progressed.

86. The CHAIRMAN suggested that the Sub-Commission should adopt draft resolution L.3 as well as the amendment proposed Ms. Hampson in document L.20, together with the change proposed by Mr. Yokota.

87. Draft resolution E/CN.4/Sub.2/1998/L.3 was adopted together with the amendments proposed.

Draft decision E/CN.4/Sub.2/1998/L.8 (Transmission of Sub-Commission resolution 1996/22 to the Secretary-General)

88. Draft decision E/CN.4/Sub.2/1998/L.8 was adopted.

Draft decision E/CN.4/Sub.2/1998/L.16 (The right to food)

89. Mr. ALFONSO MARTÍNEZ and Mr. KHALIL said they wished to sponsor the draft decision.

Draft decision E/CN.4/Sub.2/1998/L.16 was adopted unanimously.

90. Draft resolution E/CN.4/Sub.2/1998/L.17 (Forced evictions)

91. Mr. ALFONSO MARTÍNEZ said he was fully in favour of the draft resolution and noted that paragraph 3 was particularly timely in view of certain situations where indigenous groups were forced to leave their land. That paragraph provided a legal basis for the negotiations which were taking place at that very moment between such groups and the authorities of the country in which they lived.

92. However, it would have been better if paragraph 4, which recommended that all Governments should provide immediate restitution and compensation, had been worded more flexibly. In some cases, restitution of land to the persons or groups concerned was not feasible.

93. Draft decision E/CN.4/Sub.2/1998/L.17 was adopted without a vote.

Draft resolution E/CN.4/Sub.2/1998/L.19 (Situation of migrant workers and members of their families)

94. Mrs. WARZAZI said that the situation of migrant workers and members of their families was a subject very dear to her heart, and noted that it was thanks to the Sub-Commission that the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families had been drawn up. She informed the Sub-Commission that Mr. Joinet and Mr. Khalil had expressed a desire to sponsor the text.

95. Draft resolution E/CN.4/Sub.2/1998/L.19 was adopted unanimously.

The meeting rose at 1 p.m.

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SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND
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Fiftieth session

SUMMARY RECORD OF THE 27th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 20 August 1998, at 3 p.m.

Chairman: Mr. GUISSÉ

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THE REALIZATION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS:

(a) THE INTERNATIONAL ECONOMIC ORDER AND THE PROMOTION OF HUMAN RIGHTS;

(b) THE REALIZATION OF THE RIGHT TO DEVELOPMENT;

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CONTENTS (continued)

(c) THE QUESTION OF TRANSNATIONAL CORPORATIONS;

(d) THE REALIZATION OF THE RIGHT TO EDUCATION, INCLUDING EDUCATION IN HUMAN RIGHTS (continued)

THE ADMINISTRATION OF JUSTICE AND HUMAN RIGHTS:

(a) QUESTION OF HUMAN RIGHTS AND STATES OF EMERGENCY;

(b) APPLICATION OF INTERNATIONAL STANDARDS CONCERNING THE HUMAN RIGHTS OF DETAINED JUVENILES;

(c) GROSS AND MASSIVE VIOLATIONS OF HUMAN RIGHTS AS AN INTERNATIONAL CRIME;

(d) JUVENILE JUSTICE;

(e) PRIVATIZATION OF PRISONS;

(f) INDIVIDUALIZATION OF PROSECUTION AND PENALTIES, AND REPERCUSSIONS OF VIOLATIONS OF HUMAN RIGHTS ON FAMILIES

The meeting was called to order at 3.05 p.m.

THE REALIZATION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS:

(a) THE INTERNATIONAL ECONOMIC ORDER AND THE PROMOTION OF HUMAN RIGHTS;

(b) THE REALIZATION OF THE RIGHT TO DEVELOPMENT;

(c) THE QUESTION OF TRANSNATIONAL CORPORATIONS;

(d) THE REALIZATION OF THE RIGHT TO EDUCATION, INCLUDING EDUCATION IN HUMAN RIGHTS

(agenda item 4) (continued) (E/CN.4/Sub.2/1998/L.21-L.23 and L.28)

Draft resolution on the realization of the right to education, including education in human rights (E/CN.4/Sub.2/1998/L.21)

1. Mrs. WARZAZI said that she had not had human rights education in mind when she had proposed at the previous session that the right to education be included in the agenda. Mr. Mehedi had, on that occasion, raised strong objections to the proposal but Mr. Weissbrodt's suggested compromise of inserting the phrase "including human rights education" had proved acceptable to all.

2. She did not agree with Mr. Mehedi's statement in paragraph 4 of his working paper (E/CN.4/Sub.2/1998/10) that there could be no real respect for the right to education without education in human rights. Ignorance and illiteracy were one of main sources of human rights violations. Education for all would ensure that people were aware of their rights, knew when they were violated and knew how to enjoy them to the full.

3. Awareness of their duties to other members of society could be promoted through civic education, which played an important role in many education systems. Human rights could not prevail without ensuring access to education as a fundamental right, to be guaranteed primarily by the State but also by civil society and the international community, which must condemn the policies pursued by international financial institutions that resulted in the curtailment of social and educational programmes.

4. The right to education was viewed by some as a social right, but the implications of lack of access to education made it a political right. The Sub-Commission's study must demonstrate that everybody had the right of access to education, which was different from saying that no person should be denied the right to education, the formula used in article 2 of Protocol No. 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms mentioned in paragraph 6 of Mr. Mehedi's report.

5. Articles 28 and 29 of the Convention on the Rights of the Child specified the benefits to be reaped from enforcement of the right to education. A well educated child with a conscience and sense of duty would respect human rights as a matter of course. That was the line to pursue in

the Sub-Commission's study, which should draw inspiration from the work of the International Commission on Education for the Twenty-first Century and be mindful of the need to respect diversity.

6. Recommendations based on an analysis of State obligations and obstacles to the realization of the right to development should be made to States and the international community, particularly the relevant specialized agencies and international financial institutions. The recommendations should recognize the role of parents and their rights in respect of the content of education. A section should be devoted to the education of girls and its beneficial impact on their future and on the communities in which they lived.

7. She requested Mr. Mehedi to amend the phrase "the right to education and human rights education" in the second line of paragraph 36 of his working paper to read "the right to education, including human rights education".

8. Mr. EIDE, introducing the draft resolution, said he supported Mrs. Warzazi's statement, particularly with respect to the relevance of the Convention on the Rights of the Child, article 29 of which contained an excellent definition of what the content of education should be. He also agreed on the importance of guaranteeing the right to education of the girl child, a right which was currently under attack.

9. Mr. KARTASHKIN said that his name had been accidentally omitted from the list of sponsors. He hoped that the draft resolution would be adopted unanimously.

10. Mr. FAN Guoxiang endorsed Mrs. Warzazi's statement. Education was vitally important since the younger generation would determine the future of the world and the quality of development in the twenty-first century.

11. Mr. MEHEDI said that human rights education was necessarily a product of the right to education. His working paper was merely a preliminary draft, listing relevant factors and issues to be addressed, and drawing attention to the cross-sectoral nature of the right to education. He would take account of the role of parents and education for the girl child in a later version. Human rights education was central to any general study of the right to education, the object being to develop a human rights culture, while respecting differences stemming from tradition, religion and other factors.

12. He would like to add the following two paragraphs, numbers 4 and 5, to the draft resolution with a view to underlining the complementarity of the work of the Commission on Human Rights and the Sub-Commission and the need for coordination between them and with other relevant bodies:

> "4. Welcomes the appointment of Mrs. Katerina Tomaševski as Special Rapporteur on the right to education by the Commission on Human Rights;
>
> 5. Expresses its wish for cooperation with the other bodies dealing with the right to education and human rights education."

13. It was so agreed.

14. Mrs. WARZAZI proposed that the word "particularly" in the eighth preambular paragraph be replaced by "including" and that the last preambular paragraph be deleted because its gave the impression that the Sub-Commission was "blowing its own trumpet".

15. Mr. MEHEDI said he would prefer to retain the word "particularly" in the eighth preambular paragraph because it focused attention on a particular aspect and, in his view, a corollary of the right to education.

16. Mrs. WARZAZI said she withdrew the amendment but had reservations concerning the paragraph in question.

17. The draft resolution, as orally revised, was adopted.

Draft resolution on human rights as the primary objective of trade, investment and financial policy (E/CN.4/Sub.2/1998/L.22)

18. Mr. EIDE, introducing the draft resolution, said it focused on the possible impact on human rights of the planned Multilateral Agreement on Investment. It proposed entrusting to one or two members of the Sub-Commission the preparation of a working paper on the subject and on ways and means of ensuring that more attention was given to human rights in trade, investment and financial policies.

19. The draft resolution was adopted.

Draft resolution on the question of the impunity of perpetrators of violations of economic, social and cultural rights (E/CN.4/Sub.2/1998/L.23)

20. Mr. WEISSBRODT proposed that the operative paragraph of the draft resolution be amended to read:

> "Recommends to the Commission on Human Rights that it should establish follow-up machinery on the question of the impunity of perpetrators of violations of economic, social and cultural rights."

21. It was so agreed.

22. The draft resolution, as orally amended, was adopted.

Draft resolution on human rights and income distribution (E/CN.4/Sub.2/1998/L.28)

23. Mr. BENGOA, introducing the draft resolution, said that its purpose was to set in motion the process of establishing a social forum in the Sub-Commission which would give the discussions of economic, social and cultural rights a higher profile. To that end, it contained a draft resolution for submission to the Commission on Human Rights.

24. It was also important to involve other bodies dealing with the right to development and economic, social and cultural rights in the proceedings. He

was open to all suggestions regarding working methods and procedures that would help to make the Sub-Commission a leading social forum in the United Nations system.

25. Mr. KARTASHKIN said he noted that paragraph 5 of the draft resolution submitted to the Commission for adoption mentioned the possibility of appointing a special rapporteur to maintain the relationship between the social forum and the Sub-Commission. It would appear, therefore, that the social forum was to operate as a separate body.

26. Mr. FAN Guoxiang said he was very pleased at the greater emphasis that was being placed on economic, social and cultural rights, including such issues as the international economic order, the right to development, transnational corporations and the right to education. A great deal more needed to be done but the proposed social forum was the outcome of a sudden expansion of a limited study of human rights and income distribution. His own view was that the Sub-Commission's work should be based on more solid ground so as to ensure steady progress.

27. The social forum did not fall within the purview of the Sub-Commission: the participants would include representatives of all the major world bodies and would be invited by the High Commissioner for Human Rights rather than by the Sub-Commission. The forum had the potential to become very large, perhaps even larger than the Commission. Where, then, would that leave the Sub-Commission? The provisions of paragraph 1, subparagraphs (c) (d) and (e), of the draft resolution submitted to the Commission for adoption implied that it would lose its role in discussing economic, social and cultural rights.

28. Those rights, together with the right to development, were clearly collective; but they differed widely in developed and developing countries. States naturally shouldered the main responsibility, but the international community also had a duty to help. In that context, he noted that, with the exception of the Nordic countries which were most generous, the developed countries generally had failed in their responsibilities.

29. It was important to establish precisely who had the responsibility in given situations. For example, the financial crisis in some Asian countries had been visited upon themselves through bad management or lack of experience. Into that situation had come the financier Mr. George Soros, coming away with a large amount of money and then offering to share his expertise on how to develop the economy. It had to be asked who had violated what standards in such a case and where the responsibility should lie.

30. Whereas the Human Rights Committee had been established shortly after the adoption of the International Covenant on Civil and Political Rights, some years had passed before the International Covenant on Economic, Social and Cultural Rights had been complemented by its own Committee. That might explain why associated problems had not been resolved for many years, but he questioned whether a social forum could do any better.

31. While he approved of paragraphs 1, 2 and 3, of the draft resolution submitted to the Commission, there was an ambiguity in paragraph 4 that needed

clarification. Lastly, he felt that the proposed title might lead to confusion with the regular event held at Davos; a more fitting title might be "Economic, social and cultural forum".

32. Mr. BENGOA confirmed that the proposed social forum would be held within the framework of the Sub-Commission. Although it would, of course, be preferable for extra time to be added to the session, the Commission was unlikely to permit that and it had been deemed more prudent not to request it. His recommendation was, as he stated in the addendum to his final report (E/CN.4/Sub.2/1998/8), based on consultations with numerous groups and international organizations.

33. Mr. ALFONSO MARTÍNEZ said that the social forum would initially meet for two or three days during the Sub-Commission's session. It might subsequently be put to the Commission that more time was required, if the social forum was to fulfil the Commission's own recommendation that it should become a follow-up body.

34. Mr. FAN Guoxiang said that, while he would not obstruct the consensus, he asked that his continuing reservations be taken into account.

35. Mr. YOKOTA said that he had originally feared that the proposed social forum might duplicate the work of the Committee on Economic, Social and Cultural Rights, but it was clearly important for the Sub-Commission - through the proposed social forum - to deal with the issues of globalization, income distribution and extreme poverty, as Mr. Bengoa had so admirably demonstrated. There would be no duplication.

36. He had some amendments to propose to the text, however. The scope of paragraph 2, subparagraph (a), of the draft resolution submitted to the Commission should be extended to read "Members of the United Nations and interested observer Governments; active participation by members of the Commission on Human Rights should be encouraged;". In subparagraph (c) an editorial change was required to make it clear that the reference was to associations of workers and others and, in subparagraph (d), he proposed deletion of the words "in developed countries", since there were many non-profit-making institutions in the field based in developing countries too.

37. Mr. WEISSBRODT said he thought those amendments acceptable. He also thought that, in paragraph 1, subparagraph (e), of the draft resolution submitted to the Commission, the phrase "the Intergovernmental Working Group of Experts on the Right to Development" should be deleted, since he believed that the Working Group in question no longer existed.

38. More generally, he suggested that, insofar as the proposed forum represented a reformulation of the Sub-Commission's own agenda, its establishment might rest on a firmer basis and be less open to modification by the Commission if, rather than submitting a draft resolution to the Commission for adoption, the Sub-Commission adopted the text as a decision of its own.

39. Mr. FAN Guoxiang said that the Working Group referred to by Mr. Weissbrodt was, in fact, still in existence. With regard to the second

point, there was merit in the idea, but the project was so big that the endorsement of the Commission should be sought, otherwise the whole proposal might have to be reconsidered at a later stage.

40. Mr. BENGOA concurred. The Sub-Commission could act on its own, but it was an important issue and, in any case, the financial implications for the Secretariat meant that the proposal would have to be channelled through the Commission. Moreover, if the forum were not part of the Economic and Social Council structure, special accreditation procedures for non-governmental organizations (NGOs) would be required.

41. The draft resolution, as orally amended, was adopted.

THE ADMINISTRATION OF JUSTICE AND HUMAN RIGHTS:

(a) QUESTION OF HUMAN RIGHTS AND STATES OF EMERGENCY;

(b) APPLICATION OF INTERNATIONAL STANDARDS CONCERNING THE HUMAN RIGHTS OF DETAINED JUVENILES;

(c) GROSS AND MASSIVE VIOLATIONS OF HUMAN RIGHTS AS AN INTERNATIONAL CRIME;

(d) JUVENILE JUSTICE;

(e) PRIVATIZATION OF PRISONS;

(f) INDIVIDUALIZATION OF PROSECUTION AND PENALTIES, AND REPERCUSSIONS OF VIOLATIONS OF HUMAN RIGHTS ON FAMILIES

(agenda item 9) (E/CN.4/Sub.2/1998/NGO/2; E/CN.4/Sub.2/1997/29)

42. Ms. MUNSHI (European Union of Public Relations) said that terms such as "detainee" suggested a relationship between the legal and institutional apparatus of a State and its citizens and any State, whether democratic or not, was answerable to the international community. A far greater problem was posed by the increasing incidence of kidnapping by terrorist groups around the world. Some cases of hostage-taking had hit the headlines, but there were numerous unknown, innocent individuals caught up in terrorist violence.

43. It was time for the international community to develop a body of laws laying obligations on terrorist groups, in parallel with those applying to Governments. Terrorist groups had made a mockery of the entire concept of justice. Ironically, they sought protection for their own human rights under the very institutions of democracy that they targeted.

44. In the name of human rights, the international community had shackled nation States while allowing armed terrorist bands to operate with impunity. It was time to move away from comfortable definitions of human rights and to take a fresh look at who were the perpetrators of violence and who were the victims. In many cases it would be found that States were increasingly becoming the victims because a terrorist acknowledged no laws and had no respect for human rights.

45. Ms. HAMPSON said that if prisons were considered to be merely care and treatment centres, there would be no intrinsic reason why they could not be privatized. Justice, however, was essentially a State function, and the relationship between prisons and court decisions could not be overlooked. State authorities were involved in both sending persons to prison and securing their release; they should not wash their hands of what happened in-between. It would thus be more appropriate to regard those running privatized prisons as exercising "delegated authority" from the State, whereby the State still remained responsible for how the prisons were run. That would point to the need for regulations to prevent any risk of human rights violations. It could also be argued that regulation was necessary because of the State's obligation to ensure the protection of the human rights of all persons within its jurisdiction, including incarcerated persons who were particularly vulnerable to violations of their rights. The issues of material conditions of detention and possible ill-treatment of prisoners were thus inextricably linked to the privatization issue.

46. Great care must be taken with respect to the use of the term habeas corpus. Although the procedure was intended to ensure judicial control of the lawfulness of detention, habeas corpus would not be effective in cases of disappearance, which involved the very denial of detention. The legal norm which should be made non-derogable was the judicial control of both the procedural and substantive lawfulness of detention. In some jurisdictions, however, that was not the scope of the habeas corpus remedy. It would thus be preferable to use a descriptive phrase explaining what was actually meant, possibly followed by the words "sometimes known as habeas corpus". Similar care might need to be taken in respect of the use of the term amparo.

47. She welcomed, with enthusiasm, the draft international convention on the prevention and punishment of enforced disappearances. It was to be hoped that the Commission on Human Rights would accord it due priority, not only for the sake of the "disappeared" persons, but also for that of their relatives and friends who experienced a living hell while waiting for information. Having personally represented many such persons in cases of gross human rights violations, she was aware of the severe frustration they experienced when denied information by those very authorities they knew to be in possession of the truth.

48. Mr. SHIMOJI (World Federation of Trade Unions) said that his organization was alarmed at the practice of detention without fair trial in countries such as Pakistan which used discrimination as a deliberate political tool. In 1996, the Human Rights Commission of Pakistan had published a report detailing cases in which people had been detained and tortured merely for professing a different faith. People persecuted in their own country typically sought their revenge in other countries where their oppressors formed a minority, and that caused a vicious circle of oppression; such was the case in Indian Jammu and Kashmir.

49. Ms. GARSTANG (Liberation) said that, in Indonesia's most northerly province, Aceh, thousands of people had recently come forward to testify about gross violations perpetrated against them during 10 years of military operations, including gang-rapes. Some villages were called "widows' villages" because of the numbers of men who had "disappeared. In July, a

parliamentary mission visiting the region had been inundated with information. At least 10 mass graves had been identified by local residents, some believed to contain up to 300 bodies. Her organization had a list of 34 men who had disappeared at the hands of the military between January and May 1998. The Special Rapporteur on extrajudicial, summary or arbitrary executions should pay an urgent visit to Aceh.

50. In the State of Punjab, India, Indian police had unceremoniously cremated extrajudicially executed people as "unidentified bodies". Indisputable evidence had led the Supreme Court to direct the National Human Rights Commission to investigate the disappearances. The Indian Government had challenged the Commission's mandate and prevented it from carrying out its work. A "People's Commission" had thus been set up under leading Indian jurists, but its first hearing had been interrupted by the police. A number of human rights activists testifying to violations by those same police had been routinely harassed, severely tortured and detained. The Sub-Commission was urged to investigate the practice of fabricated charges in India and to examine ways of improving the protection of human rights defenders.

51. Ms. RUSSO (North-South XXI) said her organization was very concerned about political repression in Mexico and Sri Lanka, including the illegal detention and severe ill-treatment of large numbers of political prisoners. In Mexico, many members of "The Voice of the Cerro Hueco", a group in Chiapas seeking social, economic and political justice for the Indian people, had been released recently, however arrests and torture under illegal detention of others continued. Increased militarization was a matter of concern, particularly in view of the fact that the military had been implicated in various massacres, including the one in Acteal on 22 December 1997.

52. In Sri Lanka, where a nationwide state of emergency had been declared two weeks previously, 47 Tamil prisoners in Kalutara had been on hunger strike since 23 June 1998 to protest against the Government's failure to investigate massacres in high-security prisons. She urged the Sub-Commission to take decisive action in view of the fact that war crimes were currently being committed under cover of a state of emergency.

53. Ms. GIRMA (African Association of Education for Development) provided precise and extensive details of cases of political assassination, disappearances and arbitrary detentions in Djibouti, Ethiopia and Eritrea, many of which involved renowned human rights activists. The official invitation by Eritrea and Ethiopia to United Nations organizations and bodies and to the International Committee of the Red Cross (ICRC) to visit those countries should thus not be ignored, and any fact-finding mission should take note of the information already supplied by NGOs such as her own.

54. Mr. VITTORI (Pax Christi International) said that the separation of powers and the independence of the judiciary, without which there could be no satisfactory administration of justice, were fundamental freedoms, compliance with which was not always rigorous. The often courageous initiatives of the "small judges" in some Latin countries, who had often paid the price of keeping their hands clean by jeopardizing their careers and even their lives, was to be respected.

55. If there were examples of progress in the administration of justice there were also a number of regressions which caused concern: Tunisia, once exemplary in terms of law and tolerance, presented a sorry picture, with authority increasingly in the hands of a single man unwilling to accept the legitimacy of opposition. The Tunisian Human Rights League had effectively been decapitated, and there were many examples of harassment, intimidation and provocation even against families and children. Nevertheless, it was some consolation that the reaction of the Tunisian people had been a healthy one.

56. The Argentine Supreme Court, whose status was no guarantee of independence, had recently, in violation of the international conventions ratified by Argentina, put an end to the search for the 30,000 people who had disappeared under the dictatorship.

57. It was a pity that, for reasons of security, the Sub-Commission had had to restrict the intervention of an expert when reports on the country of his or her nationality were under consideration, with the resultant loss of valuable information.

58. The Sub-Commission should, through its working groups, studies and special rapporteurs, continue to assist the International Criminal Court, whose recent establishment was very welcome, despite the regrets and reservations expressed and questions asked by his own and other major NGOs working in defence of human rights. It was also most astonishing that the world's number one policeman was trying to exclude itself and its citizens from a jurisdiction it wished to see applied to other countries.

59. Ms. FAYOLLE (International Prison Watch) said that capital punishment was still being applied to minors in the Islamic Republic of Iran, Nigeria, Pakistan, Saudi Arabia, the United States of America and Yemen. More than half of all the citizens of the United States considered that child murderers should be treated as adults before the law.

60. Discussions were taking place in many Western countries on the subject of lowering the age of criminal responsibility, a matter of great concern: States should be reminded of the provisions of the Convention on the Rights of the Child. Thousands of children around the world were incarcerated - awaiting a verdict, following sentencing, living with imprisoned parents or illegally detained. In many countries, minors could be detained for purposes of protection and were often in prison because there was nowhere else to put them. They were not officially recognized by the authorities because they had not been sentenced, and so they did not have the same rights as other prisoners. Children who were considered "uncontrollable" were often detained and street children were often picked up by the police as were child victims of trafficking.

61. Children deprived of their freedom were often ill-treated by adults, the police and fellow detainees; they were often held in unsuitable conditions and deprived of hygiene, medical care, food and education. States must repeal the laws and administrative provisions that conferred on the public authorities such vast discretionary powers, because systematic recourse to the imprisonment of children was unacceptable.

62. Mr. BERDYNAJ (International Federation of Human Rights Leagues) said he welcomed the fact that the sessional working group on the administration of justice had completed the text of the draft international convention on the prevention and punishment of enforced disappearances and hoped that the Commission on Human Rights would consider and approve it as soon as possible.

63. His organization and its Peruvian affiliate were extremely concerned that, since 1997, the Peruvian Constitutional Court no longer had the power to assess the constitutionality of laws and that the Peruvian Congress had irregularly dismissed three of the seven members of the Court. More than 70 per cent of Peruvian judges and public prosecutors held temporary positions, a fact which affected their independence and impartiality. Recourse to habeas corpus had been limited to special tribunals and the jurisdiction of military courts had been extended to include quite minor offences and charges against civilians, including juveniles. Conditions of imprisonment in Peru fell far short of international standards.

64. His organization and its Syrian affiliate welcomed the release by the Syrian authorities in June 1998 of 250 political prisoners and prisoners of conscience, among them the spokesman of the Syrian affiliate. They also welcomed the release in March 1998 of 121 Lebanese who had been illegally detained in Syria. Nevertheless, at least 2,000 Syrian citizens, including human rights defenders, remained in arbitrary detention for expressing their opinions. His organization deplored the attempts of Syrian security service personnel in Lebanon to suppress any information regarding the situation of thousands of Lebanese abducted during the war by the Syrian army or pro-Syrian Lebanese militias, and hoped that the recent releases would be the first step towards a genuine respect for human rights.

65. His organization and its Jordanian affiliate were concerned at the impending threat to the right to freedom of opinion and expression in Jordan. A bill introduced in the Jordanian Parliament in June 1998 would make the right to publication dependent upon newspapers depositing quite a large sum of money, would increase the fines for violating the Press Law and would prohibit publication of any article, photograph or cartoon which might be considered offensive to the royal family, the armed forces, religion, the judiciary, national unity or the leaders of Arab, Islamic or friendly countries.

66. His organization and its Northern Ireland affiliate warmly welcomed the Good Friday Agreement and shared the public revulsion at the horrendous bombing in Omagh on 15 August 1998. However, if lasting peace was to be secured, it was crucial that the human rights aspects of the Good Friday Agreement be implemented fully and speedily and they were concerned that the United Kingdom Government's plans to implement those human rights aspects would minimize rather than maximize their impact. They urged that Government to establish an independent judicial inquiry into the allegations of official involvement in the murder of the defence lawyer, Patrick Finucane, and to act on the other recommendations of the Special Rapporteur on the independence of judges and lawyers, particularly those relating to the detention of suspects under the emergency laws.

67. Mr. REINHARD (Inter-Parliamentary Union) said that his organization's Committee on the Human Rights of Parliamentarians was faced with a growing number of cases of members of parliament exercising their oversight function in respect of the judicial process being themselves prosecuted under charges ranging from defamation to sedition. As an example, he quoted the case of Mr. Lim Guan Eng, an opposition Member of the Malaysian Parliament who had criticized the Attorney-General of Malaysia for applying double standards in a statutory rape case against a former Chief Minister who was alleged to have had sexual relations with a 15-year-old girl.

68. He had been charged and found guilty under Malaysia's Sedition Act of prompting disaffection with the administration of justice and under the Printing and Publications Act of maliciously printing false information, and fined the equivalent of US$ 6,000, which would have been enough to disqualify him automatically from Parliament. He had appealed against the judgement, as had the Attorney-General, who considered that the fine was inadequate and had sought a prison sentence; the Malaysian Court of Appeal had replaced the fine with a three-year prison sentence, and the case would be heard on 24 August 1998 in last instance by the Federal Court. If convicted, Mr. Lim Guan Eng would forfeit his parliamentary mandate.

69. Apart from insisting that, in expressing his view and that of a large section of the public, Mr. Lim Guan Eng was merely exercising his right to freedom of expression, the Inter-Parliamentary Union had stressed that parliamentarians, as protectors of human rights, had a special responsibility for safeguarding human rights and freedoms and must concern themselves with alleged violations in whatever branch of the State they might occur. His organization had consistently emphasized that a Parliament's oversight function contributed to ensuring the lawful and proper functioning and administration of justice and could not be construed as undue interference with the judiciary.

70. Mr. SORABJEE said that running prisons was an essentially governmental function which could not be abdicated or delegated. He was not in favour of their privatization. It was not a question of running a railway or of supplying electricity but a matter of dealing with human beings and their future. It did not merely concern the incarceration of prisoners; it also involved their treatment, the protection of their human rights and, even more important, their rehabilitation.

71. Turning to the remedy of habeas corpus, he said that, while it was indeed the greatest safeguard of the liberty of the individual, it would have very limited value if its scope were not expanded to render possible a judicial review of the merits of detention. In most common-law countries, a judge considering a writ of habeas corpus merely examined whether the procedural requirements had been strictly complied with. If they had, the detainee was not released. It was necessary therefore for the scope of habeas corpus to be extended so that a court could review the legality of the detention on merit.

72. There were some Governments that did not respect judicial orders for the release of persons and an obligation must be placed upon them to respect and obey such orders, with failure to do so being treated as a crime. Otherwise, a writ of habeas corpus would be of very limited value.

73. Mr. PARY (Indian Movement "Tupaj Amaru") said that, in all societies, justice, like democracy, had always been at the service of the dominant political and economic elites which, in the Americas, were of European origin. For the national majorities there was no justice in the generic sense of the word, and they had never been able to exercise real democracy, only a fictitious and obsolete form of it.

74. In the Andean countries, human rights were steadily deteriorating. The Government of Peru, citing "national security", had promulgated anti-constitutional decrees and re-established military courts for trying common crimes such as delinquency and drug trafficking which should be the subject of civil jurisdiction. Behind all the social problems lay the extreme poverty of the indigenous and mestizo populations, a poverty that could not be combated through military courts.

75. The manner in which political prisoners were held in Peruvian prisons without having been put on trial violated the International Covenant on Civil and Political Rights and the Human Rights Committee had, on 6 November 1997, adopted a decision finding violations of article 14, paragraphs 1, 2 and 3 of the Covenant in respect of the trial before "faceless judges" of the indigenous leader and opponent of the regime, Victor Palay. The Sub-Commission should urge the Government of Peru to respond to that decision and to free Mr. Palay.

76. In Bolivia, the militarized zone of Chapare had become a field of brutal repression where the Government had reacted to demonstrations with the arrest of hundreds of coca producers and the murder of two of them under the pretence of eradicating coca production. The authors of those murders continued to enjoy total impunity. The Sub-Commission should urge the Government of Bolivia to punish those responsible.

77. His organization drew the Sub-Commission's attention to the plight of Mr. Leonardo Peltier, an indigenous leader in the United States of America, who had spent 22 years as a political prisoner in degrading and inhuman conditions as a result of which his health had deteriorated and he required urgent medical attention. It called on the Sub-Commission to urge the Government of the United States of America to reopen his case and free him unconditionally.

The meeting rose at 6.05 p.m.